

# LEGAL MEMORANDUM

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## The President's Reorganization Authority

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### Abstract

*The President may be able to accomplish some reorganization goals through particular statutory delegations of authority, executive orders, department memos, management policies, and other devices, but to accomplish major reorganization objectives, he will need explicit statutory authority from Congress, a viable procedure to enact reorganization plans, and a feasible implementation strategy. As for the details of any reorganization plan, exact limits on the President's authority to reorganize the executive branch "can properly be analyzed only in light of the particular changes which are proposed" and the relevant constitutional provisions and statutory authority.*

### Introduction

What is the President's authority to reorganize the executive branch? The Constitution vests authority in Congress as an instance of its power to enact legislation; to create the departments, agencies, and offices within the executive branch; to define their duties; and to fund their activities. The President may create, reorganize, or abolish an office that he established, but he cannot fundamentally reorganize the executive branch in direct violation of an act of Congress.

The President traditionally has "acquiesce[ed] in the need for reorganization legislation in order to restructure or consolidate agencies within the Executive Branch."<sup>1</sup> Prior Reorganization Acts were valuable to the President, in part because they incorporated expedited parliamentary procedures, and to Congress because they included a one-house legislative veto. But in 1983, the Supreme Court of the United States, in *INS v. Chadha*, found the

### KEY POINTS

- The Constitution vests authority in Congress as an instance of its power to enact legislation; to create the departments, agencies, and offices within the executive branch; to define their duties; and to fund their activities.
- Under current law, the President has no statutory authority to reorganize the executive branch, except where acts of Congress delegate authority to make particular changes.
- The President may create, reorganize, or abolish an office that he established, but he cannot fundamentally reorganize the executive branch in direct violation of an act of Congress.
- The President retains whatever reorganization authority Congress has delegated to him by law, as well as the ability to develop task forces and commissions and to work with Congress on reorganization plans.
- Even without statutory authority, the President may convene a task force or commission to study concerns within the executive branch and recommend changes to Congress.

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legislative veto to be unconstitutional.<sup>2</sup> While Reagan-era legislation purported to offer a procedure to preserve presidential reorganization authority, that authority has never been used and so remains untested.<sup>3</sup> The most recent Reorganization Act expired in 1984.

The President retains whatever reorganization authority Congress has delegated to him by law, as well as the ability to develop task forces and commissions and to work with Congress on reorganization plans. The exact limits of the President's authority to reorganize the executive branch "can properly be analyzed only in light of the particular changes which are proposed" and the relevant statutory authority.<sup>4</sup>

### **Does the President Have Authority Under Article II of the U.S. Constitution to Reorganize the Executive Branch on His Own?**

Article II of the U.S. Constitution provides three potential sources of authority for the President to reorganize the executive branch on his own. Each, however, falls short of that goal.

*First*, the Executive Vesting Clause specifies that "[t]he executive Power shall be vested in a President of the United States of America."<sup>5</sup> This grants the President "those authorities that were traditionally wielded by executives" subject to constitutional constraints.<sup>6</sup> The Founders did not leave this as a kingly power to change government functions at will. Rather, the power to execute the laws extends only as far as the laws allow.<sup>7</sup> For entities created by Congress, the power to enact, amend, or abolish these executive departments and agencies and their functions belongs to Congress.<sup>8</sup> Article II's Take Care Clause—that "[The President] shall take Care that the Laws be faithfully executed"<sup>9</sup>—refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.<sup>10</sup>

Yet the U.S. Supreme Court has recognized that the Executive Vesting Clause did not compel the President to execute the laws alone.<sup>11</sup> "To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders."<sup>12</sup> May the President therefore reorganize the executive branch through subordinates in executive departments and

agencies? Two more Article II clauses are pertinent, but the answer remains no.

*Second*, the Appointments Clause reads, "The President...shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... [the] Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law."<sup>13</sup> That provision enables the President to select officers who will implement his policies.<sup>14</sup> Subject to statutory restrictions,<sup>15</sup> the President may remove those who prove obstinate,<sup>16</sup> but the power to appoint and remove officers "alone does not ensure that all decisions made by administrative officials will accord with the President's views and priorities."<sup>17</sup>

*Third*, the Opinion Clause enables the President to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."<sup>18</sup> This allows the President to obtain information from, and to "consult with and try to persuade," his subordinates in the course of their official conduct.<sup>19</sup> President George Washington used this process to direct subordinates' official actions, but the relevant statutes "commonly delegated final authority directly to him."<sup>20</sup> These provisions do not enable the President to reorganize the executive branch on his own or through subordinates.<sup>21</sup>

Congress, not the President or the U.S. Constitution, creates and organizes the offices and departments that the Appointments and Opinion Clauses address by virtue of the Necessary and Proper Clause.<sup>22</sup> "The organizational function of this clause was recognized from the outset. Among Congress's first acts were establishing executive departments and staffs."<sup>23</sup> When the First Congress created the Treasury Department, for example, it established therein "distinct offices—Secretary, Comptroller, Auditor, Treasurer and Register—and their duties."<sup>24</sup> Congress sets "to whatever degree it chooses, the internal organization of agencies," their missions, "personnel systems, confirmation of executive officials, and funding, and ultimately evaluates whether the agency shall continue in existence."<sup>25</sup>

Congress may delegate broad authority to executive branch officials to implement, change, and even reorganize their functions.<sup>26</sup> The First Congress, however, "set a precedent" of delegating "statutory powers and instructions...to specified officials of or below Cabinet rank, rather than to the President."<sup>27</sup>

The President's Article II authority to oversee those powers does not amount to directing every decision that is made by someone within the executive branch.<sup>28</sup>

Congress can also use the Appropriations Clause to curb the President's reorganization efforts, even efforts authorized by substantive statutes.<sup>29</sup> The power of the purse remains "the most complete and effectual weapon" against "carrying into effect" an executive reorganization plan and any other "just and salutary measure."<sup>30</sup> An executive branch officer's statutory authority to execute reorganization schemes "can only be affected by passage of a new law."<sup>31</sup> But Congress can simply amend an appropriations law if it does not like where reorganization is headed,<sup>32</sup> and the Anti-Deficiency Act prohibits officers and employees of the U.S. government from going around the will of Congress in any way that involves incurring obligations in excess of appropriated funds.<sup>33</sup>

The result is that the President does not have constitutional authority to reorganize the executive branch on his own.

### **Does the President Have Statutory Authority to Reorganize the Executive Branch?**

Under current law, the President has no statutory authority to reorganize the executive branch, except where acts of Congress delegate authority to make particular changes.<sup>34</sup>

In 1932, Congress first enacted law delegating to the President broad authority to reorganize the executive branch according to specific guidelines.<sup>35</sup> Since then, nine Presidents have sought and secured similar authority from Congress.<sup>36</sup> The last to exercise that authority was Jimmy Carter; the last to receive it was Ronald Reagan. The most recent Reorganization Act expired in December 1984.<sup>37</sup> Since then, Presidents George W. Bush and Barack Obama sought reorganization power from Congress,<sup>38</sup> which introduced but did not enact legislation that would have granted them reorganization authority.<sup>39</sup>

The history of delegated legislative authority for Presidents to reorganize the executive branch is informative for future usage with one caveat. Those acts were valuable in part because they provided expedited parliamentary procedures—in particular, a one-house legislative veto, which enabled either house of Congress to reject a President's

reorganization plan.<sup>40</sup> In 1983, the U.S. Supreme Court held that the one-house veto violated the U.S. Constitution's bicameralism and presentment requirements for lawmaking.<sup>41</sup> In 1984, Congress enacted an alternate procedure along with reorganization authority: "that a joint resolution be introduced in both the House and Senate upon receipt of a reorganization plan."<sup>42</sup> No vote, no plan; no presidential signature, no plan. While that seems to follow the constitutional lawmaking process, President Reagan never used his reorganization authority, and these procedures remain untested.<sup>43</sup>

As a result, the President currently has no general statutory authority to reorganize the executive branch.<sup>44</sup> Yet Congress could decide to enact a law similar to the last-used Reorganization Act of 1977 or one of its progenitors.<sup>45</sup> Even without statutory authority, the President may convene a task force or commission to study concerns within the executive branch and recommend changes to Congress.<sup>46</sup> History provides several examples that met with varying degrees of success.<sup>47</sup>

### **Conclusion**

The President may be able to accomplish some reorganization goals through particular statutory delegations of authority, executive orders, department memos, management policies, and other devices. But to accomplish major reorganization objectives, he will need explicit statutory authority from Congress, a viable post-*Chadha* procedure to enact reorganization plans,<sup>48</sup> and a feasible implementation strategy.<sup>49</sup> As for the details of any reorganization plan, exact limits on the President's authority to reorganize the executive branch "can properly be analyzed only in light of the particular changes which are proposed" and the relevant constitutional provisions and statutory authority.<sup>50</sup>

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## Appendix

### **Reorganization Act Amendments of 1984, Pub. L. 98-614, 98 Stat. 3192 (1984) (expired 1984) (codified as amended at 5 U.S.C. § 901 (1984))**

#### **5 U.S.C. § 903—Reorganization plans:**

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any

improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

#### **5 U.S.C. § 908—Rules of Senate and House of Representatives on reorganization plans:**

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter [1]) on or before December 31, 1984; and they supersede

other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

**5 U.S.C. § 909—Terms of resolution:**

For the purpose of sections 908 through 912 of this title, “resolution” means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the reorganization plan numbered \_\_\_\_\_ transmitted to the Congress by the President on \_\_\_\_\_, 19\_\_\_\_.”, and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

**5 U.S.C. § 910—Introduction and reference of resolution:**

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution’s introduction.

**5 U.S.C. § 911—Discharge of committee considering resolution:**

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the

first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

**5 U.S.C. § 912—Procedure after report or discharge of committee; debate; vote on final passage:**

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

## Endnotes

1. Limitations on Presidential Power to Create a New Executive Branch Entity to Receive and Administer Funds Under Foreign Aid Legislation, 9 Op. O.L.C. 76, 78 (1985).
2. *INS v. Chadha*, 462 U.S. 919 (1983).
3. See Reorganization Act Amendments of 1984, Pub. L. 98-614, 98 Stat. 3192 (1984) (expired 1984) (codified as amended at 5 U.S.C. § 901 (1984)), pertinent parts published *supra* as appendix; RONALD C. MOE, ADMINISTRATIVE RENEWAL: REORGANIZATION COMMISSIONS IN THE 20TH CENTURY 114-117 (2003).
4. President's Authority to Promulgate a Reorganization Plan Involving the Equal Employment Opportunity Commission, 1 Op. O.L.C. 248, 251 (1977).
5. U.S. CONST. art. II, § 1, cl. 1.
6. "Hence the President cannot declare war, grant letters of marque and reprisal, or regulate commerce, even though executives had often wielded such authority in the past." And "the President cannot make treaties or appointments without the advice and consent of the Senate. Likewise, the President's pardon power is limited to offenses against the United States and does not extend to impeachments or violations of state law." Sai Prakash, *Executive Vesting Clause*, in THE HERITAGE GUIDE TO THE CONSTITUTION, <http://www.heritage.org/constitution/#!/articles/2/essays/76/executive-vesting-clause> (last visited May 9, 2017).
7. See, e.g., Centralizing Border Control Policy Under the Supervision of the Attorney General, 26 Op. O.L.C. 22 (2002); Steven G. Calabresi & Saikrishna Prakash, *The President's Power to Execute the Laws*, 104 YALE L.J. 541 (1994); Prakash, *supra* note 6 (arguing that the U.S. Supreme Court "apparently has accepted the notion that the Executive Vesting Clause grants powers beyond those enumerated in the remainder of Article II") (citing *Myers v. United States*, 272 U.S. 52 (1926); *Nixon v. Fitzgerald*, 457 U.S. 731 (1982); *Morrison v. Olson*, 487 U.S. 654 (1988)).
8. See U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."); *INS v. Chadha*, 462 U.S. 919 (1983); *Clinton v. City of New York*, 524 U.S. 417 (1998) (holding that the President's line-item veto granted by the Line Item Veto Act of 1996 was unconstitutional).
9. U.S. CONST. Art. II, § 3. "The Take Care Clause...is best read as a duty that qualifies the President's executive power." Sai Prakash, *Take Care Clause*, in THE HERITAGE GUIDE TO THE CONSTITUTION, <http://www.heritage.org/constitution/#!/articles/2/essays/98/take-care-clause> (last visited May 13, 2017).
10. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952); see also Cass R. Sunstein & Lawrence Lessig, *The President and the Administration*, 94 COLUM. L. REV. 1, 60-69 (1994).
11. "He must execute them by the assistance of subordinates." *Myers v. United States*, 272 U.S. 52, 117 (1926).
12. *Marbury v. Madison*, 5 U.S. 137, 166 (1803).
13. U.S. CONST. art. II, § 2, cl. 2.
14. Alexander Hamilton explained that department heads "ought to be considered as the [President's] assistants or deputies...and on this account they...ought to be subject to his superintendence." THE FEDERALIST No. 72, at 436.
15. See *Morrison*, 487 U.S. 654 ("independent counsel provisions of the Ethics in Government Act of 1978" did not violate separation of powers); Sunstein & Lessig, *supra* note 10, at 116-17.
16. See *Myers*, 272 U.S. at 135; *The Jewels of the Princess of Orange*, 2 Op. Att'y Gen. 482, 489 (1831) (the President's power of "removal of the disobedient officer, and the substitution of one more worthy in his place, would enable the President, through him, faithfully to execute the law").
17. Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2385 n.307 (2001).
18. U.S. CONST. art. II, § 2, cl. 1. See also Akhil R. Amar, *Some Opinions on the Opinion Clause*, 82 VA. L. REV. 647 (1996); Vasan Kesavan & J. Gregory Sidak, *The Legislator-in-Chief*, 44 WM. & MARY L. REV. 1, 8 (2002) (The "clause implies the specification of orders to, and the evaluation of the performance by, someone to whom the President has delegated executive power. The analogy is to a principal and agent relationship.").
19. Peter L. Strauss, *The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, 84 COLUM. L. REV. 573, 669 (1984). Executive branch "officers cannot keep the President in the dark about how their departments are operating." Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836, 1879 (2015).
20. Harvey C. Mansfield, *Reorganizing the Federal Executive Branch: The Limits of Institutionalization*, 35 L. & CONTEMPORARY PROBLEMS 462, 463 (1970).
21. See Amar, *supra*, note 18, at 653 ("Even as the sole apex of awesome [executive] powers...the President appears as a limited figure—as a Generalissimo, CEO, and Executioner *under law*."); Peter L. Strauss, *Overseer, or "The Decider"?* *The President in Administrative Law*, 75 GEO. WASH. L. REV. 696 (2007); Kathryn A. Watts, *Proposing a Place for Politics in Arbitrary and Capricious Review*, 119 YALE L.J. 2, 60 n.264 (2009) (citing *Sierra Club v. Costle*, 657 F.2d 298, 410 (D.C. Cir. 1981), for the idea that "an administrative rulemaking may be overturned on the grounds of political pressure if 'the content of the pressure...is designed to force [the agency] to decide upon factors not made relevant by Congress in the applicable statute' and if the agency's determination was actually affected by the 'extraneous considerations.'").

22. U.S. CONST. art I, § 8, cl. 18 (“The Congress shall have Power To...make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”); *M’Culloch v. Maryland*, 17 U.S. 316 (1819); EDWARD CORWIN, *THE PRESIDENT: OFFICE AND POWERS* 83 (1948).
23. David Engdahl, *Necessary and Proper Clause*, in *THE HERITAGE GUIDE TO THE CONSTITUTION*, <http://www.heritage.org/constitution/#!/articles/1/essays/59/necessary-and-proper-clause> (last visited May 13, 2017).
24. Mansfield, *supra* note 20, at 463.
25. CONG. RES. SERV., RL30876, *THE PRESIDENT’S REORGANIZATION AUTHORITY: REVIEW AND ANALYSIS 2* (Mar. 8, 2001) (hereafter CRS 2001).
26. See *Kendall v. U.S. ex rel. Stokes*, 37 U.S. 524, 610 (1838) (“There are certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that congress cannot impose upon any executive officer any duty they may think proper...and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President.”); *Isbrandtsen-Moller Co. v. United States*, 300 U.S. 139 (1937) (upholding a secretarial order enforced after an executive reorganization plan).
27. Mansfield, *supra* note 20, at 463.
28. See Kagan, *supra* note 17.
29. U.S. CONST. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”).
30. James Madison, *THE FEDERALIST* No. 58. For instance, in 1989, the U.S. Department of Justice sent Congress its plans to reorganize the Office of Legal Policy under statutory authority to undertake “significant reprogramming, reorganizations, and relocations” within the department. “[C]ertain Congressmen” disapproved and barred any further implementation of departmental reorganization schemes by writing the following into appropriations law: “None of the funds provided in this or any prior Act shall be available for obligation or expenditure to relocate, reorganize, or consolidate any office, agency, function, facility, station, activity, or other entity falling under the jurisdiction of the Department of Justice.” See Department of Justice Authority Regarding Relocations, Reorganizations, and Consolidations, 13 Op. O.L.C. 280, 281 (Aug. 28, 1989).
31. 13 Op. O.L.C. at 283 (citing *INS v. Chadha*, 462 U.S. 919 (1983)).
32. See *United States v. Dickerson*, 310 U.S. 554, 555 (1940).
33. 31 U.S.C.A. § 1341 (West) (1990).
34. See William G. Howell & David E. Lewis, *Agencies by Presidential Design*, 64 J. POLITICS 1095, 1096 (2002) (identifying “over 240 administrative agencies” that Presidents “constructed” after 1950 “through executive orders, orders issued by department secretaries or agency heads, and reorganization plans”); John Yoo & Todd Gaziano, *PRESIDENTIAL AUTHORITY TO REVOKE OR REDUCE NATIONAL MONUMENT DESIGNATIONS*, AM. ENTERPRISE INST. 8 (Mar. 2017) (“A basic principle of the Constitution is that a branch of government can reverse its earlier actions using the same process originally used.”); Harold J. Krent, *From a Unitary to a Unilateral Presidency*, 88 B.U. L. Rev. 523 554–59 (2008) (criticizing unilateral executive reorganization).
35. See *Isbrandtsen-Moller*, 300 U.S. 147 (noting that a 1932 appropriations law authorized the President to abolish or transfer functions of “any commission, board, bureau, division, service, or office in the executive branch of the Government”).
36. They are Presidents Herbert Hoover, Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard Nixon, Jimmy Carter, and Ronald Reagan. See CONG. RES. SERV., RL31446, *REORGANIZING THE EXECUTIVE BRANCH IN THE 20TH CENTURY: LANDMARK COMMISSIONS* (June 10, 2002) (hereafter CRS 2002). Past reorganization plans have shaped much of the modern executive branch. For example, they created the Department of Health, Education and Welfare; Drug Enforcement Agency; Environmental Protection Agency; and Federal Emergency Management Agency (see Howell & Lewis, *supra* note 34, at 1097) and established the Executive Office of the President. See CONG. RES. SERV., R42852, HENRY B. HOGUE, *PRESIDENTIAL REORGANIZATION AUTHORITY: HISTORY, RECENT INITIATIVES, AND OPTIONS FOR CONGRESS* 31–32 (Dec. 11, 2012) (hereafter CRS 2012).
37. See CRS 2001, *supra* note 25, at n.1. Presidents George H. W. Bush and Bill Clinton did not seek statutory reorganization authority. See CRS 2012, *supra* note 36.
38. CRS 2012, *supra* note 36, at 32.
39. See H.R. 10, § 5021 (108th Congress) and S. 2129 (112th Congress) and H.R. 4409 (112th Congress).
40. See *Chadha*, 462 U.S. 919; CRS 2012, *supra* note 36; Louis Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 L. & CONTEMPORARY PROBLEMS 273 (1993).
41. *Chadha*, 462 U.S. 919. *But see* Effect of *INS v. Chadha* on the Authority of the Secretary of Defense to Reorganize the Department of Defense Under U.S.C. § 125, 8 Op. O.L.C. 82, 93 (1984) (arguing that prior “reorganization authority survives the fall of the veto”).
42. CRS 2001, *supra* note 25, at 8. See Reorganization Act Amendments of 1984, Pub. L. 98-614, 98 Stat. 3192 (1984) (expired 1984) (codified as amended at 5 U.S.C. § 901 (1984)), pertinent parts published *infra* as appendix.
43. See MoE, *supra* note 3, at 114–117.

44. Arguably, “what little advantage remained in the reorganization plan process, namely an expedited procedure with a guaranteed vote, was more than matched by the disadvantages of” other procedural and substantive requirements. *Id.* at 116–17. So “[i]n short,” it may be easier “to simply follow the regular legislative process.” *Id.* But if left entirely to Congress, “we will fiddle around here all summer trying to satisfy every lobbyist, and we will get nowhere.” Fisher, *supra* note 40, at 278 (citing 75 CONG. REC. 9644 (1932) (statement of Sen. David Reed (R-PA))).
45. See generally CRS 2012, *supra* note 36. The 1977 Act offered broad authority to consolidate inter- and intra-agency functions as well as “the abolition of all or a part of the functions of an agency, except” for any “enforcement function or statutory program.” 5 U.S.C. § 903. It also prohibited the President from certain actions such as creating, abolishing, or completely consolidating any executive departments. See 5 U.S.C. § 905 (1977); CRS 2001, *supra* note 25, at 6.
46. For instance, in 1993, President Bill Clinton “simply announced” the creation of a National Performance Review with “no statutory authority,” staff, funding, or “work plan.” CRS 2002, *supra* note 36, at 91. Vice President Al Gore shaped it into an interagency task force to make the executive branch leaner and more entrepreneurial. It eventually claimed to have ended “the era of big government,” “reduced the size of the federal civilian workforce by 426,200 positions,” and delivered “savings of more than \$136 billion...by eliminating what wasn’t needed.” *Id.* at 96.
47. See generally Mansfield, *supra* note 20; John W. Lederle, *The Hoover Commission Reports on Federal Reorganization*, 33 MARQ. L. REV. 89, 91 (1949); HARRY S. TRUMAN LIBRARY INST., *Truman and the Hoover Commission*, 19 WHISTLE STOP (1991), <https://www.trumanlibrary.org/hoover/commission.htm>.
48. See CRS 2001, *supra* note 25, at 8 (discussing H.R. 1314 and the Reorganization Act of 1984).
49. See GGD-81-57, REPORT OF THE U.S. GENERAL ACCOUNTING OFFICE TO THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, IMPLEMENTATION: THE MISSING LINK IN PLANNING REORGANIZATIONS (Mar. 20, 1981), <http://www.gao.gov/assets/140/132455.pdf> (advising that implementation plans will help to avoid past staffing, funding, office space, accounting systems, and other problems that distracted officials from their missions).
50. 1 Op. O.L.C. 248, 251.